

HOUSE BILL REPORT

E2SHB 1458

As Passed House:

March 14, 2005

Title: An act relating to managing on-site sewage systems in marine areas.

Brief Description: Concerning the management of on-site sewage systems in marine areas.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Hunt, Dickerson, McCoy, B. Sullivan, Williams, Haigh, Appleton, Linville, Chase, Dunshee, Simpson, Upthegrove, Moeller and McDermott).

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/10/05, 2/24/05 [DPS];

Appropriations: 3/5/05 [DP2S(w/o sub NREP)].

Floor Activity:

Passed House: 3/14/05, 56-41.

Brief Summary of Engrossed Second Substitute Bill

- Requires local health officers in 12 Puget Sound counties to designate marine recovery areas by July 1, 2006, and develop on-site sewage system (OSS) program implementation plans by July 1, 2007.
- Directs local health jurisdictions find failing and unknown OSS and ensure system owners make repairs by July 1, 2010.
- Directs the DOH to enter into contracts with counties to ensure progress is made on the expectations in the implementation plans.
- Establishes a grant program at the DOH for the repair and replacement of OSS in counties with marine areas.
- Authorizes the State Board of Health to adopt rules to address environmental impacts associated with low-dissolved oxygen in marine waters caused by OSS.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Blake, Dickerson, Eickmeyer, Hunt and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; DeBolt and Orcutt.

Staff: Jeff Olsen (786-7157).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Natural Resources, Ecology & Parks. Signed by 17 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Priest and Schual-Berke.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Clements, Hinkle, Pearson, Talcott and Walsh.

Staff: Brian Enslow (786-7143).

Background:

The State Board of Health provides a forum for the development of public health policy in Washington. The State Board of Health has adopted rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, including on-site sewage systems (OSS). Permits are required for the installation, alteration, extension, or relocation of an OSS. Local boards of health issue OSS permits, enforce the standards, and may adopt more stringent local standards.

In October 2000, the Department of Health (DOH) convened the On-Site Wastewater Advisory Committee to advise the DOH on policy matters relating to the Wastewater Management Program. The committee developed 55 policy recommendations, which were prioritized in three areas: operation and maintenance of OSS; rule development initiatives; and, funding initiatives. A rule development committee was formed in February 2002 to assist the DOH initiate the OSS rule revision process. A draft rule has been developed and is under the official comment period until February 18, 2005.

The DOH Commercial Shellfish Licensing and Certification Program issues licenses to commercial shellfish operations and certifies their harvest sites. The commercial harvest of shellfish must be from a growing area that is classified as approved or conditionally approved according to provisions of the National Shellfish Sanitation Program Model Ordinance. The DOH Growing Area Classification program assesses shellfish growing areas and classifies them as either approved, conditionally approved, restricted, or prohibited.

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA sets effluent limitations for discharges of pollutants to navigable waters, and the Department of Ecology is delegated federal CWA authority by the United States Environmental Protection Agency (EPA) and also is the agency authorized by state law to implement state water quality programs. Section 303(d) of the federal CWA requires states to prepare a list every two years of the specific water bodies or water body segments that do not meet the state water quality standards, also known as the 303(d) list.

The legislative authority of each county having shellfish tidelands may establish a shellfish protection district to include areas in which nonpoint pollution threatens the water quality of a shellfish growing area. Shellfish protection districts may implement protection programs to address nonpoint pollution including monitoring, inspection and repair of OSS.

Summary of Engrossed Second Substitute Bill:

By July 1, 2006, the local health officers must designate marine recovery areas of where OSS are a significant factor contributing to public health and environmental concerns and where: (a) shellfish growing areas have been downgraded; or (b) state waters are listed under the federal CWA for low oxygen levels, nitrogen, or fecal coliform. In determining the area's boundaries, the health officer must include geographic areas where OSS may have an impact.

By July 1, 2007, local health officers in 12 counties bordering Puget Sound must develop and approve an OSS program implementation plan that will guide the development and management of OSS in marine recovery areas within the local health jurisdiction. The local health jurisdictions are: Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom.

The OSS program implementation plan must address how the jurisdiction will:

- find failing OSS and ensure system owners make repairs by July 1, 2010 unless extended by the DOH;
- find unknown OSS and ensure they are inspected or repaired by July 1, 2010 unless extended by the DOH;
- identify additional minimum requirements for operation, maintenance and monitoring of OSS that will mitigate the risks posed within a marine recovery area;
- facilitate education of owners and ensure they complete operation and maintenance inspections according to rules adopted by the State Board of Health;
- maintain records and enforce permit requirements; and
- recommend alternatives to OSS.

In addition, local health officers must require that professionals such as OSS maintenance specialists and septic tank pumpers report any failing OSS. Working with the DOH, local health officers must progressively develop or enhance an electronic data system of all OSS within their jurisdiction. The DOH will develop a centralized data system for the information.

The local board of health must hold a 60-day public comment period and public hearing before adopting the OSS program implementation plan.

The DOH reviews all plans to ensure the required elements and designation of marine areas of special concern are addressed. Within 30 days of receiving a plan, the DOH must provide public notice and either approve it or provide written reasons for non-approval. If the plan is not approved, the local board of health can revise and resubmit the plan or may appeal the denial to the State Board of Health. Final resolution rests with the State Board of Health.

The DOH will enter into a contract with each of the counties to implement their plans or enhance their data systems. The contract must require evidence of progressive improvement in the marine recovery areas and other performance expected under the plan. If a jurisdiction has demonstrated good faith efforts but is unable to meet the expectations within the time frames, the DOH can grant a 12 month extension.

The State Board of Health must adopt rules to address environmental impacts associated with low dissolved oxygen levels in marine waters.

The DOH must report electronically to the appropriate committees of the Legislature by December 31, 2007, on progress in designating marine recovery areas and implementing plans. The DOH will work with stakeholders to develop recommendations for the professional certification of OSS operation and maintenance personnel, to be submitted to the Legislature by December 31, 2005.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For: (Natural Resources, Ecology & Parks) (In support of original bill) Failing onsite sewage systems impact water quality and the environment. Many of us are aware of the problems in Hood Canal, but there are problems right here in Budd Inlet and in other marine areas. The state needs to use a public-private partnership to inspect onsite systems and fix failing systems. Recent rule changes proposed by the Board of Health do not go far enough to protect marine waters. The State Board of Health needs the authority to address low dissolved oxygen levels, which are at record lows in Hood Canal. While there may be more than one solution, there is a serious problem with failing onsite sewage systems. By defining marine areas of special concern, the bill narrowly focuses on problem areas. Local health jurisdictions could privatize the inspection of onsite systems and have onsite sewage system operation and maintenance personnel do the work. Failing onsite sewage systems have resulted in the closure of shellfish growing areas, impacting the rural economies. The state has been losing shellfish growing areas, and more needs to be done to address the problem. Washington needs to enhance oversight in sensitive areas to maintain its top position in the shellfish industry. The Department of Health supports the expanded authority for the State Board of Health to address low dissolved oxygen levels. The conservation districts have been

successful in assisting the dairy industry to improve water quality, and could be a useful model for onsite sewage system owners.

(With concerns to original bill) There are many approaches local governments may take to address the problem of failing onsite sewage systems, and there should be flexibility to accommodate other approaches. While there is support for the concept and goals of the legislation, there are technical issues that need to be changed in the original bill. It is redundant to have both the public and private sector inspect the same systems. There is a suggestion that onsite sewage systems are the only problem in Hood Canal. There are many other factors contributing to water quality problems. The definition of failure is not correct, and needs to be fixed. Counties need to standardize how operation and maintenance works, standardize forms and reporting. The Department of Ecology should not be involved in regulating onsite sewage systems, that is the role of the State Board of Health and the local health board. It is not clear how this bill would work with the new rules being proposed by the State Board of Health. Operating permits would create an adversarial role between home owners and officials, when partnerships are needed to solve the problem. The new proposed state rule should be given time to work before moving forward with an operational permit requirement.

Testimony For: (Appropriations) This is an important piece of legislation; faulty on-site sewage disposal systems are responsible for half of the human pollution in Hood Canal. Narrowing the focus to geographic areas of concern should mitigate fiscal impacts to state and local governments.

(With concerns) We support the goal of the legislation, but believe it is still a work in progress. Additionally, if the Legislature believes it is critical to pass legislation that imposes cost to local government there needs to be an appropriate level of funding provided in the appropriations bill.

Testimony Against: (Natural Resources, Ecology & Parks) (Opposed to original bill) This bill suggests that the current rule being proposed is not adequate before it has been implemented. Operating permits are also assumed to address the problem of failing systems. This effort will take money, and is an unfunded mandate for local governments. High fecal coliforms counts may not be from failing onsite sewage systems, but from other sources.

Testimony Against: (Appropriations) The State Board of Health should not be given environmental rulemaking authority. Additionally, there are concerns regarding how marine areas of concerns are determined.

Persons Testifying: (Natural Resources, Ecology & Parks) (In support of original bill) Representative Hunt, prime sponsor; Bruce Wishart, People for Puget Sound; Ric Abbett, Trout Unlimited; Bill Dewey, Robin Downey and Jerry Yamashita, Pacific Coast Shellfish Growers; Stephen Langis, Puget Sound Resident; Josh Baldi, Washington Environmental Conservation; Genesse Adkins, 1000 Friends of Washington; Chris Cheney, Washington Dairy Federation; Tom Eaton, Environmental Protection Agency; and Loren Stern Department of Natural Resources.

(With concerns to original bill) Andy Cook, Building Industry Association of Washington; Janice Adair and Craig McLaughlin, State Department of Health; Melodie Selby, State Department of Ecology; Debbie Riley, Mason County Health; Larry Fay, Public Health Seattle King County; Jerry Deeter and Keith Grellner, Kitsap County Health; and Art Starry, Thurston County Environmental Health.

(Opposed to original bill) Duke Schaub, Associated General Contractors of Washington; J.R. Inman and Dan Villwock, Washington On-Site Sewage Association; and Mike Shelton, Island County Commissioner.

Persons Testifying: (Appropriations) (In support) Bruce Wishart, People for Puget Sound.

(With concerns) Vicki Kirkpatrick, Washington State Association of Counties; and Duke Schaub, Association of General Contractors.

(Opposed) Andy Cook, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: (Natural Resources, Ecology & Parks) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.